

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-18-0014
 PETITION TO AMEND RULES 32, 46-49)
 53, 55-58, AND 60-63 RULES OF THE)
 SUPREME COURT) **FILED 8/28/2018**
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ORDER
AMENDING RULES 46-49, 53, 55-58, AND 60-63, RULES OF THE ARIZONA
SUPREME COURT

A petition having been filed proposing to amend Rules 32, 46-49, 53, 55-58, and 60-63, Rules of the Arizona Supreme Court, and comments having been received, upon consideration,

IT IS ORDERED that Rules 46-49, 53, 55-58, and 60-63, Rules of the Arizona Supreme Court, be amended in accordance with the attachment hereto, effective January 1, 2019.

DATED this 28th day of August, 2018.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

Jennifer A Greene

Hon. Ann A. Scott Timmer

Paul V Avelar

Mark I Harrison

Lisa M Panahi

ATTACHMENT*

RULES OF THE SUPREME COURT OF ARIZONA

* * *

Rule 46. Jurisdiction in Discipline and Disability matters; Definitions

(a) Lawyers Admitted to Practice. Any lawyer admitted to practice law in this state is subject to the disciplinary and disability jurisdiction of this court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for admission to the practice of law which is not discovered until after the applicant is admitted may serve as an independent ground for the imposition of discipline under these rules and as an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for admission to the practice of law may result in revocation of the member's admission to the state bar, pursuant to Rule 33(b) of these rules.

(b) - (e) [No change in text.]

(f) Definitions. When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

1. "Acting presiding disciplinary judge" means an attorney member of a hearing panel designated to serve when the presiding disciplinary judge is disqualified or unable to serve in any matter.

2. "Bar counsel" means staff counsel employed by the state bar or volunteer counsel appointed to represent the state bar in discipline and other proceedings. "Chief bar counsel" means that person who by appointment by and under the direction of ~~employed by the executive director of the state bar to administer the~~ Court's discipline and disability system ~~under the direction of the executive director.~~

3.-13 [No change in text.]

14. "Filing" means delivery of the document or exhibit to the disciplinary clerk or clerk of the court, as appropriate, for inclusion in the record, or delivery of the document or exhibit to the state bar counsel for inclusion in the state bar file, as provided for in these rules. All papers, whether filed electronically or in hard copy, shall comply with the requirements of Rule 32(j).

* Additions in the text of the rule are shown by underscoring and deletions from text are shown by ~~strikethrough~~.

15.- 24 [No change in text.]

Rule 47. General Procedural Matters

(a) - (b) [No change in text.]

(c) Service. Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the rules of civil procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

1. *Service of Complaint.* Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(3). When service of the complaint is made by mail, ~~the state bar~~ counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

2. *Service of Subpoena.* [No change in text.]

(d) - (l) [No change in text.]

Rule 48. Rules of Construction

(a) - (l) [No change in text.]

(m) Immunity from Disciplinary Complaint. Members of the board, the members of the committee, the presiding disciplinary judge, an acting presiding disciplinary judge, hearing panel members, settlement officers, bar counsel or attorneys acting under the direction or authority of such persons or the court are immune from any charge or discipline complaint alleging ethical misconduct that arises out of an administrative act performed in the exercise of discretion under the authority granted under these rules. No charge or disciplinary complaint against such persons may be docketed for filing by ~~the state bar~~ counsel or be a part of any person's disciplinary history absent a finding by the committee that the charge or complaint alleges one or more violations of the Rules of Professional Conduct. In the event such a finding is made, the matter shall be docketed but may be stayed by order of the presiding disciplinary judge upon application and a showing of good cause.

Rule 49. Bar Counsel

(a) Appointment of Chief Bar Counsel and Bar Counsel. The chief bar counsel shall be appointed by the executive director, subject to the approval of this Court. Chief bar counsel may

appoint staff to carry out all discipline functions pursuant to these rules and consistent with the budget authorized by the board and as approved by the executive director.

(b) Oath of Office. All bar counsel shall take an oath of office and file a copy of said oath with the lawyer regulations records manager.

(c) Powers and Duties of Chief Bar Counsel. Acting under the authority granted by this Court of the board, and under the direction and by appointment of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member or non-member and for the coordination of such investigations; ~~employ and~~ supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A.-B. [No change in text.]

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) [No change in text.]

(ii) Probation (including admonition with probation), restitution and costs shall be posted for ~~five (5)~~ two (2) years from the effective date of the sanction or until completion, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iii)-(v) [No change in text.]

D. Notice to Courts. [No change in text.]

3. Report. At least once per year, chief bar counsel shall report to the Chief Justice on matters relevant to the performance of the discipline system.

(b)(d) Powers and Duties of Bar Counsel. Bar counsel shall:

1. – 9. [No change in text.]

* * *

Rule 53. Complainants

(a) Status of Complainant. The complainant is not a party to discipline, disability or reinstatement proceedings. By becoming a complainant, a person submits himself or herself to the jurisdiction of this court and the state bar for all purposes relating to these rules. In order to receive information as provided by this rule, the complainant must keep the state bar informed of any change of address, telephone number, or e-mail address during the pendency of the investigatory or adjudicatory phase of the proceedings. Notice may be accomplished by mailing or otherwise transmitting the notice to the complainant's last known address.

(b) Information. The following information will be provided to a complainant, by ~~the state bar~~ counsel, concerning charges made against a lawyer:

1. *Respondent's Response.* A copy of respondent's initial response to the charge, if any, except those portions subject to a protective order, will be provided to the complainant.

2. *Dismissal by Bar Counsel.* Bar counsel shall notify the complainant of the dismissal of a charge.

A. Prior to a Screening Investigation. If ~~the state bar~~ counsel dismisses a matter prior to a full screening investigation, bar counsel may notify the complainant of the dismissal by telephone. The complainant may request that the decision to dismiss be reviewed by chief bar counsel or chief bar counsel's deputy.

B. Following a Screening Investigation. If ~~the state bar~~ counsel dismisses a matter following a screening investigation, bar counsel shall mail a notice of dismissal to the complainant. The complainant may object to the dismissal as provided by Rule 55(b)(2)(A)(ii).

3. *Duty to Advise Complainant of Proceedings.* ~~The state bar~~ Bar counsel shall advise the complainant of a recommendation of any discipline, diversion, or pending agreement for discipline by consent. It shall also provide written notice of the hearing on the merits before a hearing panel, and of any public proceeding before the presiding disciplinary judge or the court. ~~The state bar~~ Bar counsel shall provide information to enable the complainant to ascertain the date, time and location of such proceedings, which may include the website address of ~~the state bar~~ counsel or the disciplinary clerk. In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement. A complainant's written objection to an agreement for discipline by consent must be submitted to ~~the state bar~~ counsel within five (5) business days of ~~bar counsel's~~ such notice. Bar counsel shall submit the complainant's objection to the presiding disciplinary judge and serve a copy on respondent or respondent's counsel.

4. *Final Disposition.* Complainants shall receive notice of the final disposition of each matter.

(c) Failure to Provide Information. The ultimate disposition of any disciplinary proceedings shall not be affected by the failure of ~~the state bar~~ counsel to provide the complainant with information as required by subsection (b) of this rule.

* * *

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. ~~The state~~ Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity.

1. If ~~the state bar~~ counsel determines the lawyer is not subject to the disciplinary jurisdiction of the supreme court, ~~it~~ bar counsel shall refer the information to the appropriate entity.

2. If ~~the state bar~~ counsel determines the lawyer is subject to the disciplinary jurisdiction of the court, ~~it~~ bar counsel shall, in the exercise of ~~its~~ bar counsel's discretion, resolve the matter in one of the following ways:

A. dismiss the matter with or without comment; or

B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted ; or

C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

(b) Screening Investigation and Recommendation by ~~the State Bar~~ Counsel. When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that he or she is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by ~~the state bar~~ counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* The respondent shall provide a written response to the allegations to bar counsel within twenty (20) days after notice of the investigation is given.

A. *Extensions of Time.* Bar counsel may grant one extension of time to file a written response not to exceed twenty (20) days. Any additional requests for extensions of time must be approved by chief bar counsel for good cause shown.

B. Failure to Respond. If respondent fails to timely respond as provided in these rules, bar counsel may seek an investigative subpoena pursuant to Rule 47(h)(1) to compel respondent's attendance and production of documents. Respondent may be subject to contempt proceedings pursuant to Rule 47(h)(4) if he or she refuses to appear or comply with the subpoena.

2. Action Taken by ~~the State Bar~~ Counsel.

A. Dismissal.

(i) Notice. After conducting a screening investigation, if there is no probable cause to believe that misconduct or incapacity under these rules exists, bar counsel shall dismiss the charge, with or without comment, by filing a notice of dismissal with the Records Manager of the Lawyer Regulation Office of the state bar. Within twenty (20) days of dismissal of a charge, bar counsel shall provide a written explanation of the dismissal to the complainant.

(ii) Review by Committee. If bar counsel dismisses the charge, the complainant may, within ten (10) days of receipt of the explanation of dismissal, submit to the Records Manager of the Lawyer Regulation Office of the state bar an objection to bar counsel's decision, which shall be reviewed by the committee. Objections shall be referred to the committee for decision. The committee shall review the matter and make a determination as provided in subsection (c) below; provided, however, that the committee shall sustain the dismissal unless it constituted an abuse of discretion. The committee may, rather than sustaining or overturning a dismissal, direct bar counsel to conduct further investigation. When the committee sustains a dismissal, it shall furnish the complainant a written explanation of its determination.

B. Recommendation Other than Dismissal. If, after investigation, bar counsel determines a recommendation for diversion, stay, probation, restitution, admonition, assessment of costs and expenses, or probable cause is appropriate, bar counsel shall provide to the complainant and to respondent a written explanation of the recommendation. Bar counsel shall inform the complainant of the right to submit a written objection, and the respondent of the right to submit a summary of the response to the charges, not to exceed five (5) pages. Such documents shall be filed with the Records Manager of the Lawyer Regulation Office of the state bar within ten (10) days of receipt of the explanation. The Records Manager ~~state bar~~ shall submit complainant's objection, if any, to the committee along with bar counsel's report of investigation and recommendation.

(c) Decision by Committee. Any recommendation by ~~the state bar~~ counsel for a disposition other than dismissal shall be reviewed by the committee.

1. – 2. [No change in text.]

3. Filing of Committee Decision. The committee shall file its decision with the Records Manager of the Lawyer Regulation Office of the state bar. The Records Manager ~~state bar~~ shall serve a

copy of the decision on respondent or respondent's counsel.

4. Disposition Prior to Formal Complaint.

[No change in text.]

Rule 56. Diversion

(a) Alternative to Discipline. Diversion is an alternative to formal discipline and may be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period. The terms of the diversion agreement will be stated in writing, and may include restitution and assessment of costs and expenses.

(b) Referral to Diversion. Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to the attorney, based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer committed professional misconduct, is incapacitated, or does not wish to contest the evidence of misconduct and the ~~state-bar~~ counsel and the respondent agree that diversion will be appropriate;

2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;

3. the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through alternative programs or mechanisms, including:

A. – D. [No change in text.]

E. any other program or corrective course of action agreed upon by ~~the state-bar~~ counsel and respondent to address respondent's misconduct;

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and

5. the terms and conditions of the diversion plan can be adequately supervised.

(c) Diversion agreement or order. If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and ~~the state-bar~~ counsel. If

bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d) Reinstatement of Discipline Proceeding. A discipline matter shall be held in abeyance during diversion. If a respondent violates a term of diversion, bar counsel may reinstate the discipline proceeding and go forward with the proceeding as provided in these rules.

(e) Dismissal. After successful completion of diversion under these rules, the matter shall be dismissed by bar counsel or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court. Dismissal under this rule shall not preclude ~~the state bar~~ counsel from using the fact of an order of diversion and the facts of the underlying matter in other discipline proceedings, except that the order shall not be considered as a prior disciplinary offense in aggravation.

Rule 57. Special Discipline Proceedings

(a) Discipline by Consent

1. *Consent to Discipline.* A respondent against whom a charge has been made or a complaint has been filed may tender, with the agreement of ~~the state bar~~ counsel, a conditional admission to the charge or complaint or to a particular count in exchange for a stated form of discipline, other than disbarment, at any stage of the proceedings.

2. - 5. [No change in text.]

(b) Reciprocal Discipline

[No change in text.]

Rule 58. Formal Proceedings

(a) Complaint. Formal discipline proceedings shall be instituted by ~~the state bar~~ counsel filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

BEFORE THE PRESIDING DISCIPLINARY JUDGE

1. - 2. [No change in text.]

(h) through (k) [No change in text.]

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Rule 60. Disciplinary Sanctions

(a) Types and Forms of Sanctions. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. – 4. [No change in text.]

5. *Probation.* Probation may be imposed by order of the court, a hearing panel, the presiding disciplinary judge, or the committee as follows:

A. – B. [No change in text.]

C. The state bar shall be responsible for monitoring and supervising the respondent during the probationary period. ~~The state b~~Bar counsel shall report material violations of the terms of probation to the presiding disciplinary judge by filing a notice of noncompliance with the disciplinary clerk and serving respondent with a copy of the notice. The notice of noncompliance shall include a verification or separate affidavit upon personal knowledge stating sufficient facts to support the allegations of material violations of the terms of probation. Respondent shall have ten days after service of the notice to file a response. Upon filing the notice of noncompliance, the presiding disciplinary judge may i) issue an order declining to proceed with the notice; ii) issue an order setting the matter for status conference; or iii) issue an order setting a hearing within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, the state bar must prove a violation by a preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent's completion or non-completion of the imposed terms.

6. *Restitution.* [No change in text.]

(b) Assessment of the Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be reduced, deferred, or waived.

1. *Statement of Costs and Expenses; Objections.* At the conclusion of the disciplinary proceedings or the entry of a disciplinary sanction by the presiding disciplinary judge or the hearing panel, ~~the state-bar~~ counsel shall file an itemized statement of costs and expenses on proven or admitted counts and shall serve a copy on respondent and the disciplinary clerk.

2. Procedure.

A. Upon Final Order of the Presiding Disciplinary Judge or the Hearing Panel. If the disciplinary sanction ordered by the presiding disciplinary judge or the hearing panel is not appealed, ~~the state bar~~ counsel shall file a final statement of costs and expenses with the disciplinary clerk within five (5) days after the time to appeal has expired. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent shall file any objections to the statements of costs and expenses within ten (10) days of service. ~~The state b~~Bar counsel may file a response within five (5) days of service of the objection. Unless otherwise ordered, objections shall be determined on the pleadings without oral argument or an evidentiary hearing. The presiding disciplinary judge or the hearing panel shall rule on any objections to costs and expenses, enter an appropriate order, file the same with the disciplinary clerk, and serve a copy on the bar counsel of record and respondent or respondent's counsel. The respondent or state bar may appeal a decision on the assessment of costs and expenses as set forth in Rule 59.

B. Upon Final Order of the Court. Upon final order of the court affirming or imposing any disciplinary sanction, ~~the state bar~~ counsel shall file a final statement of costs and expenses with the clerk of the court within five (5) days after the clerk has given notice that a decision has been rendered. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. Respondent may file an objection to the statement of costs and expenses within ten (10) days of service. ~~The state b~~Bar counsel may file a response within five (5) days of service of the objection. If respondent objects, the court may remand the matter to the presiding disciplinary judge or the hearing panel for determination as provided in subparagraph (2)(A) of this rule.

(c) Enforcement. [No change in text.]

Rule 61. Interim Suspension

(a) - (b) [No change in text.]

(c) Procedure.

1. *Conviction of a Crime.* Upon conviction of a lawyer of any crime, the clerk of the court in which the conviction is entered shall, within twenty (20) days thereafter, transmit to the disciplinary clerk and to the state bar a certified copy of the judgment of conviction, and the convicted lawyer shall, within twenty (20) days after entry of judgment of conviction of a misdemeanor involving a serious crime or of any felony, provide the following information to chief bar counsel: (a) name, bar number and address of record with the state bar, and a current address if different from the address of record; (b) the name of the court in which the judgment of conviction was entered; (c) the case or file number in which the judgment of conviction was

entered; and (d) the date the judgment of conviction was entered.

A. Felony Conviction. [No change in text.]

B. Serious Misdemeanor Conviction. A lawyer convicted of a serious crime other than a felony may be suspended, upon motion of ~~the state bar~~ counsel, pending final disposition of a disciplinary proceeding predicated upon the conviction. Within ten (10) days of ~~the state bar~~ counsel filing a motion, respondent may file with the presiding disciplinary judge a verified response showing good cause why respondent should not be suspended. The presiding disciplinary judge may permit respondent to present oral argument in support of the respondent's response and shall promptly grant or deny the motion. If the motion is granted, the lawyer shall be suspended as of the date of such order.

C. Reinstatement. [No change in text.]

2. *All other grounds for interim suspension.* ~~The state bar~~ Bar counsel may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel decision.

A. Service of Motion; Response. Upon filing of the motion, the presiding disciplinary judge shall issue an order requiring ~~the state bar~~ counsel to serve the motion and the presiding disciplinary judge's order on respondent. The motion and order shall be served within five (5) days, as appropriate under Rule 47(c), including service by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3). Respondent shall file a response to the motion within ten (10) days of service of the motion.

B. – D. [No change in text.]

(d) - (e) [No change in text.]

Rule 62. Summary Suspension by the Board of Governors of the State Bar

(a) **Grounds** [No change in text.]

(b) **Procedure.** ~~The state bar~~ Bar counsel shall provide a request for summary suspension to the board stating the grounds for and referring to the rule authorizing the order. A copy of the request shall be served on the member by certified mail, return receipt. One request may relate to more than one member. Within ten (10) days of service of the request upon the member, the member may file with the board a verified response showing good cause why the member should not be so suspended. The board may permit the member to present oral argument and shall grant or deny the state bar's request. Upon satisfaction that the state bar has shown a prima

facie case under the rule referred to, the board shall enter an order of summary suspension, which ~~the state bar~~ counsel shall mail to the respondent within ten (10) days of entry of the order.

(c) - (d) [No change in text.]

Rule 63. Transfer to Disability Inactive Status

(a) - (c) [No change in text.]

(d) Status of Pending Disciplinary Proceedings.

1. - 2. [No change in text.]

3. Order to Show Cause.

A. Petition. In the case of a lawyer who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, ~~the state bar~~ counsel shall file with the disciplinary clerk a petition for order to show cause.

B. – D. [No change in text.]

(e) - (g) [No change in text.]